IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 6602 of 2007(J)

PETITIONER:

SALIL GUPTA, S/O.ISHWAR CHANDRA GUPTA,
AGED 42 YEARS, BUSINESS, RESIDING AT
D-12A, CHACKOLA HABITAT, THEVARA FERRY P.O.,
PIN-682 013.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

1.THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO THE LOCAL SELF GOVERNMENT (M)
DEPARTMENT, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

2.THE CHIEF TOWN PLANNER,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

3.THE REGIONAL TOWN PLANNER,
REGIONAL TOWN PLANNING OFFICE,
ERNAKULAM.

4.THE CORPORATION OF KOCHI,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, KOCHI-11.

R1 TO R3 BY GOVT. PLEADER SMT.T.B.RAMANI
R4 BY ADV.MR.S.RAMESH BABU, S.C.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.6602 of 2007

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Dated: 28th February, 2007

JUDGMENT

The petitioner, a builder is aggrieved by Ext.P4 order issued by the 4th respondent, the Corporation of Kochi rejecting the petitioner's application for building permit filed on 22.8.2006 on the ground that the Floor Area Ratio in the plan violates the structure plan of Central City, Cochin. The petitioner submits that it is statutory provisions and particularly the Kerala Municipality Building Rules, 1999 which are to be adhered to by local bodies while considering approval for building construction plan and has produced Ext.P2 Government Order by which the Government has clarified that the provisions relating to Floor Area Ratio in the Kerala Municipality Building Rules will prevail over the provisions in the structure plan. But now the Government has issued Ext.P3 Government Order canceling Ext.P2 Government Order by referring to the Division Bench judgment of this court in O.P.No.8740/1997. The petitioner contends that the said judgment has nothing to do with the Floor Area Ratio but relate only with the zoning regulations and has filed this Writ Petition seeking the following reliefs:

1.Declare that the 4th respondent is bound by the relevant provisions of the Kerala Municipality Building Rules, 1999 in considering the

applications submitted by the petitioner for sanction with regard to the Floor Area Ratio.

2. Issue a writ of certiorari or such other appropriate writ or order quashing Ext.P4.

3. Issue a writ of mandamus directing the 4th respondent to accept and consider the applications of the petitioner for sanction to effect construction in accordance with the FAR mentioned in the K.M.B.Rules, 1999.

2. When this Writ Petition came up for admission Mr.K.J.Mohammed Ansar, Government Pleader took notice on behalf of respondents 1 to 3, namely, the State, the Chief Town Planner and the Regional Town Planner. Adv.Mr.S.Ramesh Babu, Standing Counsel took notice on behalf of the 4th respondent.

3. Heard Mr.K.M.Sathyanatha Menon, learned counsel for the petitioner, Mr.S.Ramesh Babu, Standing Counsel for the 4th respondent and the Government Pleader for respondents 1 to 3.

4. Mr.Sathyanatha Menon would invite my attention to my own judgment in W.P.C.No.25478 of 2006 and submit that the issue involved in this Writ Petition is the same as the one involved in W.P.C.No.25478/06. He has placed before me a copy of the judgment

in that case.

5. Mr.Sathyanatha Menon is certainly right when he submits that the issue which has been raised in this Writ Petition is the same as the one which had been raised in W.P.C.No.25478/06. I had disposed of that Writ Petition quashing Ext.P7 which corresponds to Ext.P3 in this case and directing the Government to pass fresh orders within three months of receiving copy of the judgment on the request regarding the applicability of the provisions relating to F.A.R. in Kerala K.M.B.Rules, 1999 vis a vis the provisions in the structure plan for Central City, Cochin. The Government has been directed in that case to pass orders taking into account the observations contained in that judgment after hearing the concerned parties. The local bodies who are parties in that case, namely, the Thripunithura Municipality and the Cochin Corporation were directed to consider the applications submitted by the members of the petitioners in that case till 28.8.2006, the date on which Ext.P3 was issued and to decide them in accordance with the F.A.R. permitted under K.M.B.R.1999. The observations and directions made in W.P.C.No.25478/06 will certainly apply in this case also. I find from Ext.P4 that the petitioner's application for building permit was submitted on

22.8.2006. If the petitioner's application for building permit was actually received by the Corporation prior to 22.8.2006, then the Corporation is bound to consider that application following the Floor Area Ratio provided by the Kerala Municipality Building Rules, 1999 and not the F.A.R. permitted under the Structure Plan of 1991. Ext.P4 is liable to be quashed and I quash the same. The 4th respondent is directed to pass fresh orders on the building permit application submitted by the petitioner and the plan submitted by him for approval in the light of the directions in W.P.C.No.25478/06. The petitioner is directed to produce a copy of the judgment in W.P.C.No.25478/06 also before the 4th respondent. The 4th respondent will pass fresh orders as directed above at their earliest and at any rate within two weeks of receiving a copy of this judgment and a copy of the judgment in W.P.C.No.25478/06.

The Writ Petition is disposed of as above.

srd **PIUS C.KURIAKOSE, JUDGE**